

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DARREN LUBBE,

Plaintiff,

v.

MARK MILANOVICH, et al.,

Defendants.

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1:18-CV-1011-RP

ORDER

On October 28, 2020, counsel for Plaintiff Darren Lubbe (“Lubbe”) indicated to the Court that the parties wished to consolidate this action with *Lubbe v. McCraw, et al.*, 1:19-cv-1073-RP, which involves similar questions of law and fact. (*See* Order Setting Hr’g, 1:19-cv-1073, Dkt. 39; Mot. Am. Scheduling Order, 1:18-cv-1011-RP, Dkt. 46 (“As mentioned during the last hearing, the parties wish to have this case . . . governed by the same scheduling order as Case No. 1:19-cv-1073 . . . because the facts and issues are nearly identical.”)). The Court informed counsel for Lubbe that it would consider a joint motion to consolidate the cases if the proper motion was filed with the Court. (*See* Minutes, 1:19-cv-1073, Dkt. 40 (“Motion to Consolidate Forthcoming”)). The parties have not filed a motion to consolidate in either case.¹

Federal Rule of Civil Procedure 42(a) permits a district court to consolidate “actions before the court involv[ing] a common question of law or fact.” District courts have broad discretion in determining whether to consolidate cases. *See Mills v. Beech Aircraft Corp.*, 886 F.2d 758, 761–62 (5th Cir. 1989). Consolidation is proper when it will avoid unnecessary costs or delay without prejudicing

¹ On December 28, 2020, Lubbe filed a motion to amend the scheduling deadlines in 1:18-cv-1011-RP to match the dates set forth in 1:19-cv-1073-RP. (Mot., 1:18-cv-1011-RP, Dkt. 46). However, the motion does not address consolidation of the two cases.

the rights of the parties. *See id.*; *St. Bernard Gen. Hosp., Inc. v. Hosp. Serv. Ass'n of New Orleans, Inc.*, 712 F.2d 978, 989 (5th Cir. 1983).

Accordingly, **IT IS ORDERED** that the parties shall confer as to whether actions 1:19-cv-1073-RP and 1:18-cv-1011-RP should be consolidated. The parties shall file either an agreed motion to consolidate or a joint notice indicating they do not agree to consolidate the actions on or before **January 15, 2021**.

SIGNED on December 29, 2020.

A handwritten signature in blue ink, appearing to read "R. Pitman", is written above a horizontal line.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE